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No. 86-213

In The
Supreme Court of the United States
October Term, 1986

WILLIE FIELDS, MARY LEE FIELDS,
Appellants,

vs.

BERRY LEWIS, RUTH LEWIS,
Appellees.

On Appeal from the Supreme Court of Kentucky

MOTION TO DISMISS AND AFFIRM

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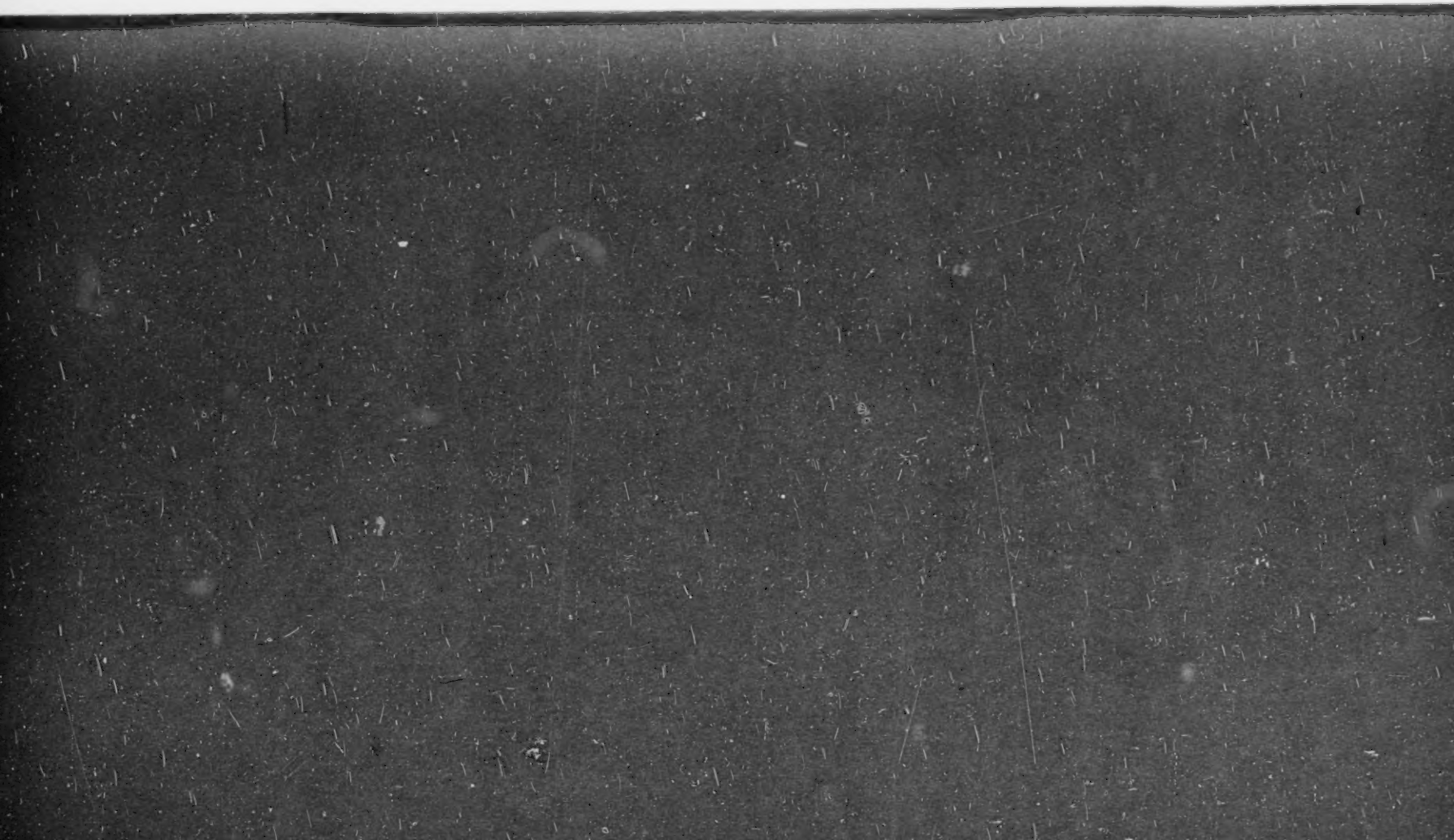

QUESTIONS FOR REVIEW

I. Whether the Trial Court erred as a matter of law, thus depriving the Appellants of their property in violation of the Fourteenth Amendment to the United States Constitution.

II. Whether the Trial Court's action in locating the boundary was clearly erroneous.

III. Whether the United States Supreme Court has jurisdiction to hear the case upon appeal from the Supreme Court of Kentucky.

IV. Whether there is a real case in controversy existing in this case.

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INTRODUCTION

This is an appeal taken by Willie and Mary Fields from a Decision of the Leslie Circuit Court adjudging the Appellees, Berry Lewis and his wife, Ruth Lewis, the owner of a certain tract or boundary of land containing approximately 15 acres. The Leslie Circuit Court, in Civil Action No. 80-CI-0184, found that the Defendant, Berry Lewis, was the owner of the disputed boundary of land which is located in a rural area of Leslie County, being known as Greasy Creek on the Middle Fork of the Kentucky River. The Court of Appeals in a Decision dated and filed April 2, 1986, before Clayton, Lester and Reynolds, affirmed the decision stating that the record was voluminous about the existence of a boundary line dispute and under Kentucky Rule of Civil Procedure 52.01, they could not find that the findings were clearly erroneous. They specifically held that the record indicates that the Decision centered around the credibility of the witness as to the disputed location of various boundary lines holding that the Trial Court had the opportunity to judge the credibility of the witnesses and make a resolution as to disputed facts, they affirmed the decision as holding that the decision was not clearly erroneous pursuant to Civil Rule 52.01.

The Supreme Court of Kentucky denied Discretionary Review on May 13, 1986 and this Appeal resulted.

This case arises with reference to four deeds of conveyance. The first Deed being a deed dated December 20, 1947 between Clara Fee Lewis to Mable Snyder. This Deed was recorded in the Leslie County Court Clerk's Office on February 21, 1948.

The second deed of conveyance is a Deed of Conveyance from Clara Lewis to Berry Lewis dated February 18, 1950 and recorded March 22, 1950. This was for approximately a two acre tract. Within this deed is a disputed call between the parties being whether a call to an "elder" or to a "cedar" was meant. Within the appendix of Appellants at Page 14a and 17a, for the Court's convenience, a copy of the recorded version of the deed is found as well as a copy of the original. The original Deed calls for a cedar and the recorded calls for an elder.

The third Deed of Conveyance was between Mable Snyder to Ruth Lewis the wife of Berry Lewis for the tract of land which she had received from Mable Snyder in Deed Book 48, Page 429, records of the Leslie County Court Clerk's Office. This deed was dated March 6, 1953 and recorded May 23, 1953.

The final deed of conveyance which is in dispute is a deed between Clara Lewis to Willie Fields and wife, Mary Lee Fields in a Deed of Conveyance dated April 22, 1957 but not recorded until August 1, 1975. Within that deed the prior two deeds have been excepted out specifically. A copy of these Deeds are found in the Appendix of the Appellant's Jurisdictional Statement, for the Court's convenience.

STATEMENT OF THE MOTION

Comes now the Appellee, Berry Lewis and Ruth Lewis, and pursuant to Supreme Court Rule 16B, moves this Court to dismiss the Appeal of the Appellant for the following reasons:

1. The Appeal is not within the jurisdiction of the Supreme Court of the United States because there is no substantial federal question.

2. The federal question which is sought to be reviewed was not timely or properly raised and was not expressly passed on by any court within the Commonwealth of Kentucky.

3. This Judgment rests on an adequate non-federal basis.

4. The Appellants, Willie Fields and Mary Fields, do not have standing to bring this appeal for reason that on the 23rd day of January, 1985, they conveyed the disputed tract to their son, Randy Fields.

5. There is no current case in controversy since the Appellants conveyed away all their interest in the disputed tract.

In the alternative, the Appellee moves the Court to affirm the decision of the Supreme Court of Kentucky for the reasons that the Civil Rule of Kentucky 52.01 was completely complied with and that the evidence within the record clearly illustrates that the Judgment of the Kentucky Supreme Court, Court of Appeals of Kentucky and Leslie Circuit Court were not clearly erroneous.

In the alternative, the Decision of the Supreme Court of Kentucky should be affirmed since the decision or the federal question involved is so manifest and unsubstantial as to need no further argument.

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COUNTERSTATEMENT OF THE CASE

This case involves a boundary line dispute involving adjacent property owners located on Greasy Creek in rural Leslie County, Kentucky. The question of ownership arises out of four conveyances as listed in the introduction above. The Plaintiffs filed suit attempting to establish ownership of approximately 1.1 acres of the 2 acre tract of land of Berry Lewis and approximately 13.9 acres of land of the 25 acre tract belonging to Ruth Lewis.

Both the Plaintiffs and Defendants took extensive proof with reference to the locations of the boundary lines of the two adjoining land owners. Each called a registered surveyor and persons who claimed to have knowledge about the boundary line dispute. Since the record is so voluminous a brief summary of the testimony of the witnesses shall be included for the Court's convenience.

Mrs. Clara Lewis, the common Grantor, testified on behalf of the Plaintiffs. First of all, she stated that she conveyed away all of her property which is the subject of this dispute and only claims a life estate upon the tract which she conveyed to Willie Fields and wife, in Deed Book 81, Page 32. This life estate was conveyed to Clara Lewis by Willie Fields and wife after the original conveyance had been made.

Mrs. Lewis stated she really did not know who made the Deeds or where the boundary lines were at all. (Lewis Deposition, pp. 5-6). Also, the only thing she knew about the property was that she had made two deeds and that they are the boundaries which are at issue in this case. She stated that she did not remember that she had made a deed to the Plaintiffs, Willie and Mary Fields until she was

reminded by the Defendant's attorney that she had done so (Clara Lewis Deposition, p. 20).

A second witness which the Appellants rely heavily upon is that of Arlee Fee. Mr. Fee testified that he knew nothing about the lines which were made after the Master Commissioner's deed, which was an action to sell this property due to his failure to pay a debt. He testified that he had no knowledge as to the boundary lines as to the Berry Lewis tract or the Mable Snyder Tract (Arlee Fee Deposition, pp. 23-24). Finally, he stated that the only knowledge that he had was through walking the lines with the Plaintiff, Willie Fields, prior to testifying in this matter (Arlee Fee Deposition, p. 24).

Mr. Willie Fields testified on his own behalf. Mr. Fields stated his deed was the third deed made from the original Clara Fee Lewis tract, and he testified as to his description which was totally inadequate, but simply referred to the Master Commissioner's deed made to Clara Lewis and specifically excepted out the Berry Lewis and Mable Snyder tracts of land.

The most important witness called by the Plaintiffs was Bob Fentress, a licensed and registered land surveyor in the State of Kentucky. He testified he went on the property to do a survey at the request of Plaintiff, Willie Fields. He testified Mr. Fields showed the specific locations of the trees and of the calls of the deed. He stated the markings on the boundary trees as claimed by Berry Lewis were much older markings than those claimed by Willie Fields. He also testified his survey would only be correct if what Willie Fields told him was true (Bob Fen-

tress Deposition, pp. 6, 7 and 11). Mr. Fentress admitted that his survey was done by the illustration of Willie Fields to the entire boundary. Mr. Fentress even stated he did not run the boundary lines of the two exception deeds, namely, the Berry Lewis and Ruth Lewis tracts but only ran out what Mr. Fields retained out of the original deed.

The Defendant, Berry Lewis, offered Mr. Walter Scott Hoskins, a professional engineer, Number 7811 and registered land surveyor for Kentucky, Number 2359, as his expert witness. It should be noted that the Appellant's attack stating that Mr. Hoskins was not a land surveyor or engineer, is completely without merit and needs no further discussion. Mr. Hoskins testified he took the original tract of Clara Fee Lewis; plotted the parent tract and then plotted the two-acre exception and the twenty-five acre tract of Berry Lewis and wife, Ruth Lewis; then what was left is what Willie Fields had. Mr. Hoskins used the original deed, the recorded deeds and went upon the property and located each marking and boundary line of the property.

The gist of Mr. Hoskins's testimony is found in his maps within the record and filed as an Exhibit with his deposition. Mr. Berry Lewis, Henry Miniard, Alvin Boggs, Roy Howard all testified and agreed with the boundary lines as found by Walter Scott Hoskins.

Finally, Mr. Dewey Lewis stated he was acquainted with the property for about fifty-three years. He specifically marked the boundaries himself of the 25-acre tract (Dewey Lewis Deposition, pp. 62-67).

ARGUMENT

The Supreme Court of the United States has no general Appellate jurisdiction over judgments and decisions of the State Court but derives them only within statutes or the Constitution. Under 28 U.S.C. § 1257, the Supreme Court can review certain final judgments or decrees rendered by State Courts. Before the Court has jurisdiction to review these State decisions, certain questions and elements must be present before the case is ripe for review.

Since the Appellant jurisdiction of the Supreme Court extends only to cases defined by Congress and may be exercised only in the manner prescribed, a jurisdictional statute such as 28 U.S.C. must be strictly construed. *Palmore v. United States*, 411 U.S. 389, 93 S.Ct. 589, 36 L. Ed. 2d 342. The elements which must be present prior to jurisdiction being exercised by the Supreme Court are as follows, to-wit:

1. There must be a substantial Federal question involved in the case.

2. There must be a final judgment of the highest State Court with reference to the decision.

3. The federal question presented to the Court to be ruled upon must have been decided by the State Court.

4. The federal question must have been timely raised within the State Courts.

Since the Supreme Court is not a Court of general jurisdiction, prior to the exercising of the jurisdiction under 28 U.S.C. § 1257, there must be a substantial Federal question in the case. That is, the question must not be of

mere form, but must be real and substantial. *Cuyahoga River Power Company v. Northern Ohio Traction and Light Company,* 252 U.S. 388, 40 S.Ct. 404, 64 L. Ed. 626. *Equitable Life Assur. Soc. v. Brown,* 187 U.S. 308, 23 S.Ct. 123, 47 L. Ed. 190. *Palmer Oil Corporation v. Amerada Petroleum Corporation,* 343 U.S. 390, 72 S.Ct. 842, 96 L. Ed. 1072.

The substantial Federal question presented to the Court must have been timely raised before the Court may have jurisdiction to review the decision of the State Court. It must affirmatively appear from the record, at least by clear and necessary implication, that a substantial question was presented to the State Court and was passed upon by that Court. *Durely v. Mayo,* 351 U.S. 277, 76 S.Ct. 806, 100 L. Ed. 1178. *Yazoo and M. R. Company v. Adams,* 180 U.S. 41, 21 S.Ct. 256, 45 L. Ed. 415.

The Federal question must be brought to the attention of the State Court deciding the case. *Green Bay & Mississippi Canal Co. v. Patten Paper Company,* 172 U.S. 58, 19 S.Ct. 97, 43 L. Ed. 364. The record filed with the Supreme Court must illustrate the Federal question was raised in the State Court. *Whitney v. California,* 274 U.S. 357, 47 S.Ct. 641, 71 L. Ed. 1095.

No particular means is mandated in which to raise the Federal question, but it must appear clearly within the record that the State Court actually considered and decided the Federal question. *Manhattan Life Insurance Company v. Cohen,* 234 U.S. 123, 34 S.Ct. 874, 58 L. Ed. 1245.

The Federal question must be real and substantial and have been presented with sufficient clarity or definiteness

before the Supreme Court has jurisdiction to review the decision of the State Court. *Seaboard A. L. Railway v. Padgett,* 236 U.S. 668, 35 S.Ct. 481, 59 L. Ed. 777.

The case which is presented to the Court by the Appellants herein is one in which a Due Process Fourteenth Amendment right is claimed. Under the guidelines of jurisdiction of the Supreme Court, as stated above, there is no jurisdiction by this Honorable Court to review the Decision of the Courts of Kentucky.

The Due Process, Equal Protection Clause does not extend to this situation of a boundary line dispute. The Appellants herein had a full trial with right to cross-examine all witnesses and the right to place into evidence their witnesses. They had the opportunity to write extensive briefs and used every right which is afforded to them under the Constitution of both Kentucky and the United States. Since the Due Process Clause and Equal Protection Clause are such vested inherent rights within the Constitution, it can clearly be shown that this case does not conform or is substantial enough in which to merit Supreme Court review. This case was merely tried by deposition in which the trial court judged the credibility of the witnesses and made his decision.

As can be seen by the record as a whole, the Federal question was never ruled upon by any State Court. By examining the Complaint, Responses, Answers, Brief within the Trial Court, Briefs within the Court of Appeals and the Motion for Discretionary Review in the Supreme Court of Kentucky, it is clearly shown this question was never raised.

The first time that the Federal question was ever raised was within the jurisdictional statement filed with the Supreme Court of the United States. Clearly, under *Green Bay & Mississippi Canal Co. v. Patten Paper Company*, 172 U.S. 58, 19 S.Ct. 97, 43 L. Ed. 364, *Whitney v. California*, 274 U.S. 357, 47 S.Ct. 641, 71 L. Ed. 1095 and *Manhattan Life Insurance Company v. Cohen*, 234 U.S. 123, 34 S.Ct. 874, 58 L. Ed. 1245 and *Seaboard A. L. Railway v. Padgett*, 236 U.S. 668, 35 S.Ct. 481, 59 L. Ed. 777, this is not sufficient.

Clear and necessary intentions that a Federal question was raised and decided in the State Court is sufficient to give rise to United States Supreme Court jurisdiction, but it is not sufficient to show that such a question might have arisen and been applicable to the case. Clear and necessary intentment from inspection of the whole record that the question had been raised and decided in the matter prescribed for jurisdiction must be shown in order for the Supreme Court to have jurisdiction to review the case. *Neilson v. Lagow*, 13 L. Ed. 909.

It seems that the Appellants have failed to illustrate a substantial Federal question or to timely raise that question pursuant to 28 U.S.C. 1257. Failure to do so will allow this court to dismiss this appeal for want of jurisdiction. *Jacks v. Helena*, 115 U.S. 288, 6 S.Ct. 39, 29 L. Ed. 392.

The Supreme Court has no jurisdiction to review this case because it is not clearly shown any Decision of the State Court which considered either denying or granting the right which is conferred on by the Constitution or involved in a Federal question. The record must clearly

express or by necessary implication that a Federal question was actually decided by the State Court adversely to the Appellant or Petitioner in the United States Supreme Court. *Kansas Endowment Association v. Kansas,* 120 U.S. 103, 7 S.Ct. 499, 30 L. Ed. 593.

Neither the Trial Court nor the Court of Appeals of Kentucky nor the Supreme Court of Kentucky ever made any ruling which confers or even indicates that they decided whether or not this case had anything to do with the Fourteenth Amendment Due Process and Equal Protection Rights. This was never brought to the attention of any of the state courts, nor was it ruled upon. Therefore, jurisdiction is not conferred upon the Supreme Court of the United States.

The Appellants rely upon the following cases in which to establish jurisdiction of this Court, none of which allows jurisdiction to be maintained by the Supreme Court of the United States, in this case.

In *Seminole Fruit and Land Company v. Piles,* 13 F.2d 878, a boundary line dispute in which the issue was raised prior to the appeal being taken. This federal question of the right to due process was raised in the pleading.

Secondly, *Ervin v. Dowde,* 366 U.S. 717, 81 S.Ct. 1639, was a case which the issue of right to a fair trial and impartial jury and change of venue was raised prior to the appeal being taken to the Supreme Court. It was argued in front of the highest court of the State of Indiana.

Third, the Appellants rely upon *Abbott v. Tacoma Bank of Commerce,* 175 U.S. 409, 20 S.Ct. 153, 44 L. Ed. 217 which case involved Due Process rights. This case held a reputation was not property under the meaning of

the Fourteenth Amendment. The Court refused to hold reputation as a property right. However, it must be stated that the issue of the Due Process Clause was raised in a reply to the answer, and, therefore, does not allow jurisdiction in this matter.

Finally, the case of *People of the State of New York, Ex Rel. New York and Queens Gas Company v. McCall,* a New York case found in 245 U.S. 345, 38 S.Ct. 122, 62 L. Ed. 337 which the due process issue was raised within the State Court prior to ever being appealed to the United States Supreme Court. So, therefore, none of the Appellants' cases will confer jurisdiction in this matter with reference to a mere boundary line dispute or where the federal question was not timely raised.

Finally, this Appeal to the United States Supreme Court should be dismissed for reasons that the judgment rests on an adequate non-federal basis. Under Kentucky law, a boundary line dispute in Eastern Kentucky is probably one of the most complicated issues to be decided by a trial court. As can be seen by the large record, this case involved a trier of fact who must decide on the credibility of the witnesses as well as to the legal questions and construction of deeds. Since these deeds are recorded in the Leslie County Court Clerk's Office some thirty-five years ago, it should be noted for the Supreme Court's convenience that the deeds were not photostatically copied or xeroxed in any way but were simply typed from the original deed onto the deeds book by the Clerk. Throughout the deed books in Leslie County during the period, certain recording errors were made.

The Judge looked at the original deeds as well as the recorded deeds and the deeds which are referred to back

in the chain of title. The reviewing courts were bound by Kentucky Civil Rule 52.01 which limits their right to disturb Findings of Fact and Conclusions of Law of the Trial Court unless they are clearly erroneous.

This rule simply states that unless there is a manifest abuse of discretion or there is not substantial evidence within the record to support the findings, then the finding of the Trial Court cannot be disturbed. It is clear from the record as a whole that the trial judge was impressed with the surveyor, Walter Scott Hoskins due to his preparation of maps and the means in which he used in surveying. The Court specifically stated in his findings of fact that the Appellant's witnesses were not as credible as the Appellees in that they all admitted to testifying as to what Willie Fields had illustrated to them. Therefore, the Appellees pray that this decision rest upon fundamental boundary line laws and the Kentucky Rules of Civil Procedure applied in this case and did not affect the Fourteenth amendment of Due Process Clause of the United States.

The Appellants major contention is found in the case of *Hensley v. Lewis,* a Court of Appeals case found in 128 S.W. 2d 917. The Appellants erroneously state that the location established by the grantor must control. The law in Kentucky states where a description contained in a deed is ambiguous, the rule for determining what property is being conveyed is that the intention of the parties shall generally control. Where parties have by their acts given a practical construction thereto, the intention of those parties will control. Therefore, the court must look to the intentions of the parties and in this case the common grantor, namely, Clara Lewis, who admitted she did not remem-

ber the boundary lines or the deeds of record, the Court must judge her credibility and gather the intentions of the parties from the surveyors, the deeds taken as a whole and by the evidence of reputation and tradition and the persons who actually knew the boundary lines. All credible evidence shall be heard and the finder of fact shall conclude where the boundary line is found. *Rowe v. Blackburn,* 253 S.W. 2d 25, *Hale v. Hanes,* 227 S.W. 2d 918, 312 KY 357, *Hensley v. Lewis,* 128 S.W. 2d 917.

Therefore, in establishing the boundary lines, all credible evidence is used to ascertain the boundaries of the adjacent tracts.

Several cases in this court, which involved real property, have stated that this is a matter of state law, not a Federal question. *Corporate Oil and Development Company v. Arnaudet,* LA, 1905, 199 U.S. 182, 25 S.Ct. 41, 50 L. Ed. 143, *Kramer v. Wilson,* 195 U.S. 408, 25 S.Ct. 94, 49 L. Ed. 256, *Donahue v. Vosper,* 243 U.S. 59, 37 S.Ct. 350, 61 L. Ed. 592.

The Supreme Court should dismiss the Appeal of the Appellants herein for reason that there is no standing of these Appellants to bring the Appeal. This is for the reason that on the 23rd day of January, 1985, Willie Fields and wife Mary Lee Fields did convey all their right, title and interest by Deed to Randy Fields for the boundary in dispute. Therefore, there is no controversy existing as between Willie Fields and Mary Fields and the Appellee, Berry Lewis.

Where the cause of action between the parties has ceased to exist, a writ of error must be dismissed, or in this case an appeal must be dismissed. *California v. San*

Pablo and T.R. Company, 149 U.S. 308, 13 S.Ct. 876, 37 L. Ed. 747. *United States v. Chetimachas Indians,* 131 U.S. 1 XX Appendix, 76, L. Ed. 1343 and *San Mateo County v. Southern PR Company,* 116 U.S. 138, 6 S.Ct. 317, 29 L. Ed. 589. Where there is no actual controversy involving real and substantial rights between the parties to the record, the case will be dismissed. *Little v. Bowers,* 134 U.S. 547, 10 S.Ct. 620, 33 L. Ed. 1016.

The Federal Supreme Court does not sit to give an opinion on moot questions or abstract propositions, or to declare principals or rules of law which cannot effect the matter and issue in the case before it, so that when, pending an appeal from the judgment of a lower court, and without any fault of the Defendant, an event occurs which renders it impossible for the Court to grant the Plaintiff any effectual relief if it should decide the case in his favor, it will not proceed to a formal judgment, but will dismiss the appeal. *Tennessee Ex Rel. Maloney v. Condon,* 189 U.S. 64, 23 S.Ct. 579, 47 L. Ed. 709. *Southern Pacific Terminal Company v. Interstate Commerce Commission,* 219 U.S. 498, 31 S.Ct. 279, 55 L. Ed. 310.

The Appellants argue they are the owners of the property but have conveyed by warranty deed the property in dispute. For that reason, there exists no controversy and the appeal must be dismissed.

In *Myer v. Pritchard,* 131 U.S. CCIX Appendix and 23 L. Ed. 961 an Appeal was taken by the Appellants, who surrendered the patent upon which the suit was brought and obtained a reissue patent. The Appeal was dismissed stating that the foundation of their legal rights had been surrendered, and, therefore, the Court could not affect their rights even if they found for the Appellants.

This is exactly the case at bar since Willie and Mary Lee Fields have conveyed their property to Randy Fields by deed. A copy of the deed is in the Appendix for the Court's convenience.

WHEREFORE, the Appellees pray that this Honorable Court dismiss the appeal of the Appellants to the United States Supreme Court for want of jurisdictions for the reasons that there was no substantial federal question present, that question was not adequately and timely raised within the state courts, the courts in the State of Kentucky did not consider that question or decide upon the alleged federal question, and finally, this decision rests upon other non-federal basis, and there is no existing controversy.

In the alternative, should the Supreme Court decide that there is jurisdiction, the Appellees would move to affirm the decision of the Kentucky Court of Appeals, Supreme Court and Leslie Circuit Court for the reasons that this question is so insignificant and that the grounds that it rests on within the State Court are so manifest that they need no further argument. The Appellants contend that their Fourteenth Amendment rights of Due Process and equal protection have been denied. However, they were given full opportunity to try the case, to cross examine witnesses, to call any and all witnesses that they desire to ask almost any question that they desire to ask in this situation. They even called Frank Bowling, a surveyor, in rebuttal to illustrate that certain markings upon trees were not surveyor markings. They have failed to illustrate that there is any manifest abuse of discretion so that an actual taking of property has occurred under the Due Process Clause. The Trial Court here simply made a decision regarding conflicting evidence in which

there was a surveyor, an engineer which testified for each side and much lay testimony was taken including the person who actually marked the boundaries, being Dewey Lewis. The Trial Court made the decision upon the credibility of the witnesses and the Court of Appeals and Supreme Court refused to overturn that decision pursuant to Kentucky Rules of Civil Procedure 52.01.

WHEREFORE, the Appellees pray that the Supreme Court, in the alternative, should affirm the Decision of the Supreme Court of Kentucky, the Court of Appeals of Kentucky and the Leslie County Circuit Court.

Respectfully submitted,

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APPENDIX

FAMILY DEED OF CONVEYANCE

This indenture made and entered into this the 23rd day of January, 1985, by and between WILLIE FIELDS & MARY LEE FIELDS, his wife, parties of the first part, and RANDY FIELDS, 1568 Eastwood Court, Lexington, Kentucky 40505, party of the second part.

WITNESSETH: That for and in consideration of love and affection that parties of the first part have for party of second part, first parties being the parents of second party, and no other consideration, the receipt of which is hereby acknowledged, parties of the first part do hereby grant, sell and convey unto the party of the second part, his heirs and assigns, the following described property, to-wit:

TRACT I: A certain tract or parcel of land, lying in Leslie County, Kentucky, on Greasy Fork of the Middle Fork of the Kentucky River and bounded as follows:

BEGINNING on a basket oak corner of E.M. Lewis and Robert Lewis running northwardly with Berry Lewis line to a cedar marked with three ax marks; thence running westwardly 8 feet and 8 inches to Clary Lewis's fence; thence running with Clary Lewis's fence to a cedar marked with three ax marks in corner of yard above the road; thence a straight line crossing road to E.M. Lewis line; thence with same to the beginning, containing ½ acre, more or less.

BEING the same property conveyed to Willie Fields and Mary Lee Fields by deed dated October 21, 1980 of record in Deed Book 93, page 218, Leslie County Court Clerk's Office.

TRACT II: Lying and being in Leslie County, Kentucky, on Lick Branch, waters of Greasy Creek and Greasy Creek and being more fully described in a deed of conveyance dated November 17, 1947, and recorded in Deed Book 49, pages 286-287, records Leslie County Court Clerk's Office, References made to said deed for a more definite description of the land herein conveyed.

EXCEPTIONS

It is understood that the prior grantor, Clara Fee Lewis has heretofor conveyed to Mabel C. Snyder a parcel of the above described tract and same is excepted from this conveyance. Said deed is dated December 20, 1947, and recorded in Deed Book 40, page 429 records Leslie County Court Clerk's Office, to which reference is here made for a description of said boundary exception.

There is also excepted from the above conveyance a tract of land conveyed by Clara Lewis to Berry Lewis by deed dated February 18, 1950 and recorded in Deed Book 51 at page 456, Leslie County Court Clerk's Office. Reference is made for said deed for a description of the parcel exception.

Also there is excepted from the boundary conveyed and other tract conveyed by Clara Lewis to Estil Coots, by deed dated February 15, 1952, and recorded in Deed Book 53, page 425, records Leslie County Clerk's Office. References made to this deed for a description of the exception in this conveyance.

BEING the same property conveyed to Willie Fields and Mary Lee Fields by deed dated April 22, 1957 of record in Deed Book 81, page 32, Leslie County Court Clerk's Office.

TO HAVE AND TO HOLD the same together with all appurtenances thereunto belonging unto the party of the

second part, his heirs and assigns forever, with COVENANT OF GENERAL WARRANTY.

Given under our hands that 23rd day of January, 1985.

/s/ Willie Fields
/s/ Mary Lee Fields

COMMONWEALTH OF KENTUCKY
COUNTY OF RUSSELL

I, Debra E. Johnson, Notary Public, do certify that the foregoing Deed from Willie Fields and Mary Lee Fields, his wife, to Randy Fields was this day produced to me in the County and State aforesaid by Willie Fields and Mary Lee Fields and acknowledged by them to be their free act and deed.

Given under my hand this the 23rd day of January, 1985.

/s/ Debra E. Johnson
NOTARY PUBLIC
MY COMMISSION EXPIRES
7-13-88

PREPARED BY:

/s/ M. Gail Wilson
BERTRAM & WILSON
Attorneys at Law
One Monument Square
Jamestown, Kentucky, 42629

STATE OF KENTUCKY)
) Sct.
COUNTY OF LESLIE)

I, Earl Fields, Clerk of the County and State aforesaid, do hereby certify that the foregoing Deed was, on the 7th day of February 1985, lodged in my office for record,

and that it, the foregoing and this certificate, have been duly recorded in my said office in Deed Book No. 102 Page 649.

Witness my hand this 7th day of February 1985.

Earl Fields Clerk

By /s/ Dianne Hoskins D.C.